IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11379 of 2000
with
SPECIAL CIVIL APPLICATION No 12441 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

PATEL NIMESHBHAI JASHUBHAI & OTHERS
Versus
STATE OF GUJARAT & OTHERS

Appearance:

1. Special Civil Application No. 11379 of 2000
   MR SI NANAVATI for Petitioners
   MR ARUN D OZA GOVERNMENT PLEADER for Respondent No.1
   MR ND NANAVATI with MR HARIDAY BUCH for Respondent No. 2
   RULE SERVED BY DS for Respondent Nos. 3 to 5
   MR PK JANI for Respondent No. 6

2. Special Civil Application No 12441 of 2000
   MR SI NANAVATI for Petitioners
   NOTICE SERVED BY DS for Respondent No.1 to 5
   MR PK JANI for Respondent No. 6

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/02/2001

C.A.V. JUDGEMENT

1. Both these petitions under Article 226 of the Constitution are filed by the students of C.P.Ed. (Certificate Course in Physical Education) and D.P.Ed. (Diploma Course in Physical Education) admitted in the respondent No.2 institution; praying for a writ of mandamus directing the respondent No.5 (State Examination Board) to declare the results of the examinations of the petitioners conducted in April 1999. By way of interim relief, the process which was to start from 7.11.2000 for admitting the students in the respondent No.2 institution for the year 2000-2001 was stayed. Both the petitions are, by consent of the parties, heard and disposed together by this common judgment.

2. Sharirik Shikshan Mahavidyalaya, run by a public trust (in short 'the College') obtained approval of the State Government, for commencing the courses of C.P.Ed. and D.P.Ed., in the form of the Resolution dated 12.8.1998 which contained the pre-condition that, for the academic year 1998-99, no grants would be given to it and the institution shall be exempt from the central admission system in the matter of admission process. The institution was also required to give public notices regarding the admission in daily newspapers and the admissions were required to be strictly on merits. The principal of the College published an advertisement and the students like the petitioners applied and obtained admissions in the said courses in the said year. Subsequently, by the letter dated 6.4.1999, the Government intimated the Trust that it was compulsory for the institutions that started after the year 1995 to obtain approval from the National Council of Teacher Education (for short 'NCTE') and that the College having not obtained such approval, the students of D.P.Ed. from it were not to be allowed to appear in the examinations commencing from 22.4.1999. The D.P.Ed. course being only of a year's duration, the said examinations were the final examinations for the students of that course.

3. The College had already applied for appropriate recognition and permission of the NCTE in the prescribed form with the requisite fee on 3.11.1998. After the inspection and fulfillment of requirements, the College

was, by order dated 31.10.2000, granted recognition for the C.P.Ed. course of two years' duration for the academic session 2000-2001, with an annual intake of 40 students, subject to fulfilling certain conditions which included the condition to admit only those candidates who were eligible as per the regulations governing the course and in such manner as may be laid down by the State Government. Before the said order granting recognition, which was to be published in the Gazette of India, the NCTE had, vide letter dated 28.9.2000, intimated to the State Inspector for Physical Education that the Western Regional Committee of NCTE had decided to grant recognition/permission to the College at the new address subject to the conditions which included a condition that the system of centralised admission was to be followed for the year 2000-2001 and the admissions should be given only to those candidates who were eligible as per NCTE norms and in accordance with the rules laid down by the State Government.

3.1 By the time the partial and conditional recognition with prospective effect was obtained as above by the College, the students admitted in late 1998 had already completed the course of one year and the State Examination Board had refused to allow them to appear in the examinations commencing from 22.4.1999. In such circumstances, the Trust approached this Court by way of Special Civil Application No.2571 of 1999 and obtained an interim relief to the effect that the communication by which the students were restrained from appearing in the examinations was to remain under suspension and the examinations might go on; but the results were not to be declared and were to be subject to further order of the Court and also to the approval likely to be granted or refused to the College by the NCTE. During the pendency of the said petition, the NCTE having granted the recognition to the College, the petition was withdrawn without any specific orders as regards declaration of the results or further studies of the students.

4. Then, as the Trust was preparing to admit fresh batch of students for the academic session 2000-2001 through the centralised admission system in compliance with the condition of recognition, the petitioners from the batch of students already admitted in 1998 have approached this Court by this petition with the grievance that not only their academic years are spoiled and results of examinations withheld, but they are wholly left out from the course without any fault on their part. Therefore, they have prayed for declaring the results of their examinations conducted by the State Board in April

1999 and a direction to allow them to pursue their further studies at the College. By an additional affidavit, the petitioners have also brought on record the fact that the students of another college at Junagadh which was also recognised from the academic year 2000-2001 vide the same letter of the NCTE dated 28.9.2000 mentioned earlier were allowed to appear in the April 1999 examinations and their results were declared and they were also issued the certificates or mark-sheets. Thus, in short, the petitioners have prayed to order declaration of their results and an order to permit them to pursue the course of second year in the same institution in place of the students to be admitted on merits through centralised admission system. An offer on their behalf is made even to pursue the whole course again and an offer on behalf of the College is made to waive their fees if they were permitted to pursue the course. Even the State authorities have initially adopted an ambivalent stand in this regard and, at one stage, a solution was sought to be found by increasing seats and intake capacity of the College. Towards this end, an interim order of this court dated 27.12.2000 was obtained permitting the College to apply for enhancing the number of seats and directing the State Government to quickly decide upon its 'no-objection' to the College and the NCTE was directed to decide such application expeditiously. However, by a curious turn of events, instead of applying for enhancement of seats and the Government granting any no-objection certificate, the Government distributed the students to be admitted on merits for the year 2000-2001 among other institutions and the intake capacity of the College was left vacant presumably for the purpose of accommodating the students like the petitioners who were already admitted by the College when it was not recognised. However, on being called upon to make its stand clear, the Government, by filing a further affidavit, submitted that there were 99 candidates in the waiting list who can be allotted to the College on the basis of merits under the centralised admission system. Admittedly and in the nature of things, the students already admitted by the College in the year 1998-99 would nowhere appear in the merit list of centralised admission system prepared for the academic year 2000-2001. Thus, what the petitioners are praying for is, in effect, their occupation of the seats which would otherwise be available to other candidates on merits through the centralised admission system.

4.1 The College relied upon the approval granted by the State Government vide its Resolution dated 12.8.1998 and dwelt upon its efforts to help the petitioners by

seeking recognition from the NCTE and by filing Special Civil Application No.2571 of 1999. It is averred that the said petition was withdrawn on the basis of a bona fide promise given by the officers of the State Examination Board and the State Government that the results of the petitioners as well as other similarly situated students would be declared as the recognition sought by them was granted by the NCTE. However, the College has expressed its inability to give admissions to the petitioners in view of the aforesaid condition of recognition. The Western Regional Committee of NCTE, the respondent No.6 herein, has vehemently opposed the grant of any relief either by directing the State Board to declare the results or by directing the College to admit the petitioners as fresh students.

4.2 The learned senior counsel for the petitioners, Mr. S.I.Nanavati, vehemently canvassed the grievance and plight of the students and strongly deprecated the demeanors and the stand of the College and the State Government. After referring to the affidavits and the relevant provisions of law, he relied upon an unreported judgment of a Division Bench of this Court in Special Civil Application No.10240 of 1998 wherein, under a similar situation, students were ordered to be treated as regularly admitted students. It must be noted here that, in that case, the students were admitted by the college before obtaining recognition from the NCTE and the University had, on that ground, not allowed the students to appear in the examinations; and the competing claim of the students wait-listed on merits was either not present or not pressed.

5. The scheme and the relevant provisions of the National Council for Teacher Education Act, 1993 ('NCTE Act' for short) is such that the Council called "National Council for Teacher Education" is established for ensuring, planning and coordinating development of teacher education and for determination and maintenance of norms and standards for teacher education. The necessary functions assigned to it, under Sec. 12 of the Act, include laying down of norms for specific category of courses or trainings in teacher education including those for the minimum eligibility criteria for admission as also for the method of selection of candidates. Provisions are made in Secs. 14 and 15 for recognition of institutions offering courses or training in teacher education and for granting recognition to such institutions subject to such conditions as may be determined by the regulations made under the NCTE Act. No examining body is allowed to grant affiliation to any

institution or hold examinations for a course or training conducted by a recognised institution unless the institution concerned has obtained recognition under Sec. 14 or permission for a course or training under Sec. 15. Thus, even as a part of the provision of Sec. 16 may not appear to be happily worded, holding of examinations by any examining body is clearly prohibited unless the institution concerned has obtained recognition under Sec. 14 of the NCTE Act. The provisions can be interpreted to mean, in light of the opening clause of Sec. 2, that holding of examinations for a course or training conducted even by an institution which is recognised under any other law is prohibited unless and until the recognition under Sec. 14 of the NCTE Act is obtained. The functions and powers of the Council under Sec. 12 of the NCTE Act have to be read in the context of the power of the Council under Sec. 32 to make regulations to carry out the provisions of the NCTE Act. In exercise of such power, the Council has made the National Council for Teachers Education (Application for Recognition, the Manner for Submission, Determination of Conditions for Recognition of Institutions and Permission to Start New Course or Training) Regulations, 1995 under which the form given in Appendix-I is prescribed for the application for recognition. And in the form prescribed as above, an undertaking is required to be executed whereby the person authorised by the institution is required to undertake to comply with, inter alia, the condition that admissions would be made as per the norms and the guidelines adopted by the State Government and the NCTE from time to time. Thus, only on such undertaking and subject to the power under Sec. 12 of laying down norms regarding method of selection of candidates, that the recognition is granted to an institution. The condition imposed by the NCTE by its letter dated 28.9.2000 intimating the grant of recognition for the year 2000-2001 subject to the condition of following the system of centralised admission has to be read in that context. Thus the petitioners could not have legally been admitted or examined without or before the College being recognized by the NCTE. It must also be noted here that the exemption granted to the College by the State Government in the matter of admission through the centralised admission system was for the year 1998-99 only.

6. Facing the legal bar against holding of examinations of the students like the petitioners and against their admission except through the system of centralised admissions, the learned senior counsel for the petitioners squarely blamed the College and the State

Government which were alleged to have colluded in duping the petitioners by collecting huge funds and fees and by holding out the promise of a valid certificate. He submitted that in any view of the matter, the other students required to be admitted on merits through the centralised admission system having been distributed by the Government among other institutions and the petitioners being the students already admitted in the institution, they ought to be allowed to pursue the course afresh so that their careers are not permanently ruined. However, as seen earlier, the process of admission is, as yet not completed and by virtue of an interim order in this proceedings, the process of admission which was to start from 7.11.2000 was directed to be stayed; and it is averred on behalf of the Commissioner looking after the centralised admission system in physical education colleges that candidates could be allotted from the waiting list made on the basis of merits. Thus, the issue is whether the students admitted prior to recognition of the institution can be allowed to fill up the seats which are legally required to be filled on merits after following the system of centralised admission according to the binding condition of recognition itself. Obviously, the NCTE would have reason and power to withdraw the recognition under Sec. 17 of the Act, if the institution contravenes any of the provisions of the NCTE Act or the rules, regulations or orders made thereunder or any conditions subject to which recognition was granted.

7. The learned counsel for the NCTE relied upon a number of judgments to submit that the High Court should not generally or liberally issue any direction which in substance would amount to directing the authorities concerned to violate any statutory rules or regulations in respect of admission of students. In fact, this Court (Coram M.S.Shah, J.) in an unreported judgment of Special Civil Application No.4881 of 1999 (Vasudevanand Snatak Adhyapan Mandir v. State of Gujarat) has, distinguishing the order in Special Civil Application No.10240 of 1998 mentioned earlier, clearly held that no institution can commence a course in teacher education without getting recognition from the NCTE and no examining body can hold examinations for a course in teacher training unless the institution concerned has obtained recognition. This view is confirmed by a Division Bench of this Court (Coram: D.M.Dharmadhikari, C.J. and C.K.Thakkar, J. as His Lordship then was) in Letters Patent Appeal No.1451 of 1999, with an observation as under:

"It is true that ultimately students who had

> studied in the petitioner institution had to suffer, but there is no way out. In several cases, the Supreme Court has observed that students who had not prosecuted study in a recognised school, should not be permitted to appear at the examination and in exercise of extraordinary powers under Article 226 of the Constitution, a High Court should not direct the Board to take their examination or to declare results of such students. It would amount to misplaced sympathy and such sympathy should not be shown in favour of such students."

8. Respectfully following the ratio of the aforesaid judgments of this Court, the prayers to direct the State Examination Board to declare the results of the examinations of the petitioners conducted by it on 22.4.1999 and/or allow the petitioners to pursue the course of studies in the same College cannot be granted. The ad-interim relief granted at the time of issuing Notice in Special Civil Application No.2571 of 1999 on 12.4.1999 wherein the examinations were permitted to go on was subject to the condition of not declaring the result and was also subject to further order of this Court as also the order of approval likely to be granted or refused by the NCTE. The recognition for that year having not been granted by the NCTE to the institution and no further orders for declaring the results having been obtained from this Court, that order cannot be made a ground in this petition for making an order which would tantamount to granting fresh admissions to the petitioners in violation of the condition of recognition for the year 2000-2001 in preference to the candidates wait-listed on merits. It is true that ultimately the students like the petitioners may have to suffer. The NCTE appears to have made conscious efforts for prevention of such problems by publishing notices in various newspapers including vernacular ones and spent lakhs of rupees on such publications and yet the institution and the students have gone ahead with the enrolment, studies and, under an order of this Court, examinations; as if to present a fait accompli. However, neither such fait accompli nor the sympathy evoked for the students whose precious years of life and whose parents' money goes waste can be allowed to deter the Court from deciding a legal issue in a legal manner and a direction by which the fruits of an illegal action could be enjoyed by the institution or the students cannot be issued. In this context, the learned counsel for the petitioners relied upon an unreported judgment of the Bombay High Court in Writ Petition No.4434 of 2000

wherein the directions were issued to reimburse and compensate the students by a D.Ed. college and to absorb such students in some other college in the vicinity. However, in the facts of that case, the Court declared all admissions granted by the institution without the necessary affiliation and recognition of the NCTE to be illegal and void ab initio; and the problems of restricted intake capacity of the other institutions and the competing claim of students wait-listed on merits do not appear to have been posed.

9. In the result, on the grounds and for the reasons discussed hereinabove, the prayers in the petition cannot be granted. Although it was vehemently argued on behalf of the petitioners that the students should be suitably compensated for the loss caused to them and the management needed to be prosecuted, it is neither a prayer in the petition nor an issue which was seriously addressed on either side. However, in view of the observations made by the Hon'ble Supreme Court in MAHARISHI DAYANAND UNIVERSITY v. M.L.R. SARASWATI COLLEGE OF EDUCATION [(2000) 7 SCC 746] and with due respect to the reasoning behind the directions given by the Division Bench of the Bombay High Court in the judgment mentioned hereinabove as also in terms of the statement fairly made on behalf of the College, it would be proper and in the interest of justice to direct the respondent No.2 to refund with interest the fees and deposits collected from the students including the petitioners who were admitted in the academic year 1998-99. Accordingly, the respondent No.2 shall refund, within four weeks from the date of its claim by the students, such amounts to such students with interest at the rate of 12% p.a. running from the date of receipt till actual payment. It is, however, clarified that dismissal of these petitions and the above directions shall be without prejudice to the rights of the students concerned to take appropriate legal proceeding for compensation or for prosecution of any persons alleged to be responsible for the loss alleged to have been caused to them. Subject to the aforesaid observations and directions, both the petitions are dismissed. Rule is discharged in Special Civil Application No.11379 of 2000 and Notice shall stand discharged in Special Civil Application No.12441 of 2000 with no order as to costs. Interim relief stands vacated.

10. The learned counsel for the petitioner requested for continuing the interim relief, which was operating in Special Civil Application No.11379 of 2000, for a period of 15 days for preferring an appeal. The learned counsel

for the College has objected to this request as the admission process was stayed by virtue of the interim relief. Under the circumstances, the request for continuing the interim relief for 15 days is rejected. However, in view of the submission that colleges are not opening till 12.2.2001, the admission process in the respondent No.2 College shall continue to remain stayed till 12.2.2001.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)